

APPEAL NO. 031919  
FILED AUGUST 27, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 10, 2003. The hearing officer resolved the disputes issues by deciding that the appellant (claimant) did sustain a compensable injury to the left knee on \_\_\_\_\_; that the compensable injury does not extend to include depression; and that the claimant has not had disability resulting from an injury sustained on \_\_\_\_\_. The claimant appealed essentially on grounds of sufficiency of the evidence. The claimant attached evidence to her appeal which was not in evidence at the CCH. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed.

The claimant attached documents to her appeal which were not admitted into evidence at the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. *See generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). In determining whether new evidence submitted with an appeal requires remand for further consideration, the Appeals Panel considers whether the evidence came to the knowledge of the party after the hearing, whether it is cumulative of other evidence of record, whether it was not offered at the hearing due to a lack of diligence, and whether it is so material that it would probably result in a different decision. *See* Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993. Upon our review, we cannot agree that the evidence meets the requirements of newly discovered evidence, in that the claimant did not show that the new evidence submitted for the first time on appeal could not have been obtained prior to the hearing or that its inclusion in the record would probably result in a different decision. The evidence, therefore, does not meet the standard for newly discovered evidence and will not be considered.

The typewritten page included in the claimant's appeal alleges that, "the plaintiff's motion to open evidence, based upon the late filed medical narrative of the [required medical examination] RME doctor should have been granted." After reviewing the record, we note that no such motion was ever made.

The claimant testified that she was injured on \_\_\_\_\_, when the seat of the bus she was driving malfunctioned. The claimant contends that her neck, back, and left shoulder were also injured in the incident of \_\_\_\_\_. The hearing officer did not err in determining that the claimant sustained a compensable injury to her left knee on \_\_\_\_\_; that the compensable injury does not extend to include depression; and that the claimant did not have disability. The claimant had the burden

of proof on those issues. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The compensable injury, extent-of-injury, and disability issues presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record demonstrates that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse those determinations on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SD  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Margaret L. Turner  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Elaine M. Chaney  
Appeals Judge

\_\_\_\_\_  
Edward Vilano  
Appeals Judge